S.B.CRIMINAL MISC. PETITION NO.481/2007

M/s Vardhaman Trading Company
through its Proprietor Ladu Lal Samar
Vs.
M/s Star Plus Auto Mobiles
through its proprietor Dinesh Jain

Date of order : : 04.05.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Shambhoo Singh, for the petitioner.
Mr.Chaitanya Gahlot, for the non-petitioner.

Heard learned counsel for the petitioner as well as learned counsel for the non-petitioner.

Learned counsel for the petitioner states that bailable warrant was never executed on the petitioner. However, learned Magistrate has declared the petitioner absconder and also initiated the proceeding under Section 82 and 83 Cr.P.C. against him. It is contended that before declaring the petitioner as absconder, it is mandatory to record the statement of the process server but learned Magistrate has not recorded the statement of process server and passed the order impugned.

The only request of learned counsel for the petitioner is that instead of standing warrant, bailable warrant of Rs.5000/- may be issued and proceedings initiated against the petitioner under Section 82 and 83 Cr.P.C. may be closed.

Learned counsel for the non-petitioner has supported the order impugned and stated that since petitioner is not appearing before the trial court, therefore, learned Magistrate has rightly declared the petitioner as absconder and initiated proceedings under Section 82 and 83 Cr.P.C against him.

I have considered the rival arguments advanced by learned counsel for the parties and also gone through the order dated 24.11.2006 passed by learned Chief Judicial Magistrate, Rajsamand. Admittedly, the petitioner was declared absconder without execution of bailable warrant. Learned trial court has not recorded the statement of process server. He should have called the process server for evidence whether accused has knowingly avoided the service of the summon or not. Looking to the all the facts and circumstances of the case, the proceedings initiated against the petitioner under Section 82 and 83 Cr.P.C. are hereby

dropped. The standing warrant issued against the petitioner be treated as bailable warrant of Rs.5000/-. Accused-petitioner may surrender before the court of learned Chief Judicial Magistrate, Rajsamand within a period of ten days. Learned Chief Judicial Magistrate shall decide the bail application of the petitioner on the same day in accordance with the law.

With the aforesaid observations/directions, this misc. petition stands disposed of.

(KRISHAN KUMAR ACHARYA), J.

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